

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed July 12, 2007 ("Office Action"). At the time of the Office Action, Claims 1-21 were pending in the Application. Claims 1-21 stand rejected. Applicant amends Claims 1, 8, 13, and 18 without prejudice or disclaimer. The amendments to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 101 Rejection

The Examiner rejects Claims 13-21 under 35 U.S.C. § 101 suggesting that the claimed invention is directed to non-statutory subject matter. Applicant hereby defers these issues until the substantive patentability of the pending claims is resolved. In the alternative, Applicant is certainly amendable to a proposed Examiner amendment to comply with the ever-changing USPTO guidelines in regards to this statute.

Section 102 Rejection

The Examiner rejects Claims 1-21 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,042,850 issued to Stewart (hereinafter "*Stewart*"). This rejection is respectfully traversed for the following reasons.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.¹ In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."² In regard to inherency of a reference, "[t]he fact that a certain result

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.”³ Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

No reference of record offers many of the features of the pending claims. For example, Independent Claim 1 recites, “...whereby the first network element, when receiving link state advertisements from non-adjacent network elements, stores the link state advertisements, and whereby when the first network element detects a new neighbor and starts a database descriptors (DBD) exchange process, the first network element will not include the link state database advertisements in the DBD exchange process, the first network element comparing one or more DBD entries from the neighbor against its normal and temporary link statedatabases to determine which link state advertisements it needs to request.”

At the passages cited by the Examiner for these features, there is nothing germane in *Stewart* to such functions. For at least these reasons, Independent Claim 1 is clearly patentable over any of the proffered references. In addition, the other Independent Claims (and their respective dependents) should be allowed for similar or analogous reasons. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

³ MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

⁴ MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

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CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not the case, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214.953.6675.

Respectfully submitted,
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